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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/530,034	04/01/2005	Martinus Petrus Maria Caspers	2004-1042	2923
<small>465</small> YOUNG & THOMPSON 209 Madison Street Suite 500 ALEXANDRIA, VA 22314			<small>7590</small> EXAMINER STULIL, VERA	
			<small>10/15/2008</small> ART UNIT 1794	PAPER NUMBER
			MAIL DATE 10/15/2008	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

**Application No.**

10/530,034

**Applicant(s)**

CASPER ET AL.

**Examiner**

VERA STULII

**Art Unit**

1794

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-10 and 16-25 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) 1-10 and 16-25 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SE-08)  
Paper No(s)/Mail Date 04/01/2005
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

**Claims 1, 2, 8 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rothhausler (DE 1,088,004).**

In regard to claim 1, Rothhausler discloses a method for preparing a beverage, wherein a dough prepared from malt flour and water is kneaded and further diluted with water to a mixture of malt flour in water (Col. 2).

Rothhausler is silent regarding to the amount of malt flour in the diluted mixture. Rothhausler in this regard discloses that the ratio of malt flour to water in the formed dough is 1:1.5 (40% water and 60% of malt flour. Rothhausler further discloses diluting dough with water to form beer wort for subsequent boiling.

Rothhausler discloses that concentrated liquid is desired, and the fact that

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amount of water added will effect degree of saturation of unwanted salts. Thus, one of ordinary skill in the art would have been motivated to employ amount of water in the wort for the conventional wort formation, at the same time achieving highly concentrated liquid as taught by Rothhausler. Rothhausler also discloses addition of such amount of water to avoid problems during lautering/separation of grain from liquid/wort.

In regard to claim 2, Rothhausler discloses the mixture of malt flour in water is filtered and/or extracted (Col. 3).

In regard to claim 10, Rothhausler discloses production of beer. In regard to claim 8, Rothhausler does not specify particular grain type of the mat. However, Rothhausler discloses production of beer "in compliance with purity regulations (malt, hop, yeast)". As evidenced by BREWING SCIENCE, the "purity law" states that beer may be brewed only from barley malt, hops, yeast and water. Therefore, by disclosing production of beer "in compliance with purity regulations", Rothhausler discloses barley malt.

**Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Rothhausler (DE 1,088,004) as applied to claim 8 above, and further in view of Riantafylloy (WO 0024684).**

In regard to claim 9, Rothhausler is silent as to the degree of barley germination. Riantafylloy discloses preparation of wort and beer of high nutritional value using partially germinated barley having substantial amylolytic activity (containing substantial amounts of soluble  $\beta$ -glucan (Abstract, p. 3).

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RIANTAFYLLOY teaches modification of conventional malting that consists in the complete omission of the germinated step or substantial reduction of the germination step, providing incompletely germinated grain (p.3).

RIANTAFYLLOY further teaches that production of beer wort and beer rich in soluble  $\beta$ -glucan (by complete omission of the germinated step or substantial reduction of the germination step, providing incompletely germinated grain) is compliant with German "purity law". Therefore, since Rothhausler discloses production of beer "in compliance with purity regulations", and RIANAFYLLOY further teaches production of German "purity law" compliant beer rich in soluble  $\beta$ -glucan using incompletely germinated grain, one of ordinary skill in the art would have been motivated to modify Rothhausler and to use incompletely germinated grain as taught by RIANAFYLLOY. One of ordinary skill in the art would have been motivated to do so, since both Rothhausler and RIANAFYLLOY disclose production of beer, using barley, compliance with "German" purity law, and multiple similar steps involved in beer production. One of ordinary skill in the art would have been further motivated to do so, since RIANAFYLLOY discloses certain benefits of complete omission of the germinated step or substantial reduction of the germination step, such as high nutritional value of beer, substantial amounts of soluble  $\beta$ -glucan, avoidance of undesirable  $\beta$ -glucan degradation.

**Claims 3-7 and 16-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rothhausler (DE 1,088,004) in view of Kimball et al (US2,673,463).** BREWING SCIENCE is cited as evidence as discussed below.

In regard to claims 3 and 16, Rothhausler is silent as to the consistency of dough. However, Rothhausler discloses similar ingredients, amounts of ingredients and method steps as claimed. For example, Rothhausler in this regard discloses that the ratio of malt flour to water in the formed dough is 1:1.5 (40% water and 60% of malt flour. Applicant discloses 35-44% of water and 55-65% of malt flour (Specification pp. 3-4). Regarding consistency recitation, it is noted that although the references do not specifically disclose every possible quantification or characteristic of its product, such as consistency of the malt dough, this characteristic would have been expected to be in the claimed range absent any clear and convincing evidence and/or arguments to the contrary. The reference discloses the same starting materials and methods as instantly (both broadly and more specifically) claimed, and thus one of the ordinary skill in the art would recognize that the consistency of the dough, among many other characteristics of the product obtained by the referenced method, would have been an inherent result of the process disclosed therein. The Patent Office does not possess the facilities to make and test the referenced method and product obtain by such method, and as reasonable reading of the teachings of the reference has been applied to establish the case of obviousness, the burden thus shifts to applicant to demonstrate otherwise. Further in this regard, as evidenced by Kimball et al (US 2,673,463), the consistency of the dough is dependent upon

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many factors such as time of stirring, temperature of the materials and temperature of the surroundings, absorptive quality, quantity and additives to the material (Col. 1 lines 10-17). Kimball et al further teaches that it has been discovered that "relationship exists between certain proportionate parts of the energy required to stir or mix a material and the consistency of the material (Col. 1 lines 45-47). Further in this regard, Kimball et al disclose that "variations in the water absorption qualities of the flour, the proportion of the flour in the mix, the speed of the mixer and other factors" will each effect the dough consistency (Col. 3 lines 65-68). Therefore, the consistency of the dough is a product of interaction of many result effective variables of many factors that are involved in the process of kneading the dough such as, time of stirring, temperature of the materials and temperature of the surroundings, absorptive quality, quantity and nature of additives to the kneaded material, energy required for kneading, variations in the water absorption qualities of the flour, the proportion of the flour in the mix, the speed of the mixer and other factors. One of ordinary skill in the art would have been motivated to modify Rothhausler and to optimize parameters such as time of stirring, temperature of the materials and temperature of the surroundings, absorptive quality, quantity and nature of additives to the kneaded material, energy required for kneading, the proportion of the flour in the mix, the speed of the mixer and other factors in order to achieve desired and optimum consistency of the dough.

In regard to claims 4, 17 and 18, Rothhausler is silent as to the duration of kneading. In regard to claims 5, 6 and 19-25, Rothhausler is silent as to the

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particular energy supplied parameters. Regarding the duration of kneading and energy supplied to the dough, Rothhausler discloses kneading the dough (supplying mechanical energy to the dough) until the dough acquires viscous, pastry consistency and further heating the dough (supplying heating energy) for 10 min to 52-58°C. Kimball et al teaches that it has been discovered that "relationship exists between certain proportionate parts of the energy required to stir or mix a material and the consistency of the material" (Col. 1 lines 45-47). As discussed above, energy supplied during kneading is a result effective variable. One of ordinary skill in the art would have been motivated to modify Rothhausler and to optimize parameters such as energy supplied during kneading in order to achieve desired and optimum consistency of the dough.

In regard to claim 7, Rothhausler is silent as to the kneading temperature. Since Rothhausler does not specifically disclose kneading temperature, it may be assumed that the kneading is performed at room temperature. Further in this regard it is noted that since Rothhausler discloses kneading the dough, and therefore applying mechanical energy to the dough, therefore mechanical temperature is transformed into heat and therefore the dough is kneaded at room temperature and higher, which meets limitation of claim 7. In any case, as stated above, consistency of the dough is a product of interaction of many result effective variables of many factors that are involved in the process of kneading the dough including temperature of the materials and temperature of the surroundings. One of ordinary skill in the art would have been motivated to modify Rothhausler and to optimize parameters such as temperature of the



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materials and temperature of the surroundings in order to achieve desired and optimum consistency of the dough.

In regard to claim 10, Rothhausler discloses production of beer. In regard to claim 8, Rothhausler does not specify particular grain type of the mat. However, Rothhausler discloses production of beer "in compliance with purity regulations (malt, hop, yeast)". As evidenced by BREWING SCIENCE, the "purity law" states that beer may be brewed only from barley malt, hops, yeast and water. Therefore, by disclosing production of beer "in compliance with purity regulations", Rothhausler discloses barley malt.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to VERA STULII whose telephone number is (571)272-3221. The examiner can normally be reached on 7:00 am-3:30 pm, Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Keith Hendricks can be reached on (571) 272-1401. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Steve Weinstein/  
Primary Examiner, Art Unit 1794

VS